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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

B.B., a minor by and through her
mother, Chelsea Boyle,

Plaintiffs,

v.

CAPISTRANO UNIFIED SCHOOL
DISTRICT; JESUS BECERRA, an
individual in his individual and official
capacities; CLEO VICTA, an
individual in her individual and official
capacities; and DOES 1 through 50,
inclusive,

Defendants.

CASE NO. 8:23-cv-00306-DOC-ADS

*Assigned for All Purposes to:
Hon. David O. Carter – Courtroom 10A*

**PLAINTIFF'S STATEMENT OF
GENUINE DISPUTES OF
MATERIAL FACTS AND
CONCLUSIONS OF LAW IN
OPPOSITION OF DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT**

Hearing Date:

Date: February 12, 2024

Time: 8:30 a.m.

Dept.: 10A

Trial Date: March 12, 2024

Complaint Filed: February 21, 2023

**TO THE COURT, DEFENDANTS, AND THEIR COUNSEL OF
RECORD:**

PLEASE TAKE NOTICE that B.B., a minor by and through her mother, Chelsea Boyle (“B.B.”) (“Plaintiff”) hereby submits the following Statement of Genuine Disputes of Material Facts and Conclusions of Law in opposition of Defendants’ Motion for Summary Judgment, either in full or in part, pursuant to L.R. 56-2.

**STATEMENT OF GENUINE DISPUTES OF MATERIAL FACTS AND
CONCLUSIONS OF LAW**

Defendant’s Uncontroverted Facts and Supporting Evidence	Plaintiff’s Response and Supporting Evidence
#1 (Plaintiff made a drawing that stated “Black Lives Mater” and “any life”.) (Deposition of Plaintiff B.B. Vol. 1, taken October 5, 2023 (“B.B. Depo Vol. 1”) at Pg. 13:4-6; Declaration of Courtney L. Hylton (“Hylton Decl.”) at ¶ 2, Ex. A)	Undisputed.
#2 (Plaintiff made the drawing on her own; she was not instructed to make the drawing by anyone.) (B.B. Depo Vol. 1, 27:22-24; Hylton Decl. ¶ 2, Ex. A)	Undisputed.
#3 (Plaintiff gave the drawing to a classmate, M.C.) (B.B. Depo Vol. 1, 17:15-16; Hylton Decl. ¶ 2, Ex. A)	Undisputed.
#4 (M.C.’s mother, Cathy Clay, saw the drawing.) (Deposition of Cathy Clay taken October 4, 2023 (“Clay Depo”) at Pg. 18:7-10; Hylton Decl. ¶ 4, Ex. C)	Disputed. Clay did not see the drawing until M.C. was home, off campus and outside of school hours. (“Clay Depo” at pg. 18:2-9)
#5 (Cathy Clay informed Becerra about the drawing via email.)	Disputed. Becerra did not “see” the e-mail until a

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	<p>(Clay Depo 27:17-19; 93:11-14; Hylton Decl. ¶ 4, Ex. C)</p> <p>#6 (Clay’s email stated, “My husband and I will not tolerate any more messages given to our daughter at school because of her skin color... As the administrator we trust you know the actions that need to be taken to address the issue.”)</p> <p>(Hylton Decl. ¶ 5, Ex. D; Clay Depo, 93:1-14.)</p> <p>#7 (Becerra called Clay and Clay told him the drawing came from Plaintiff and Becerra said he would investigate.)</p> <p>(Clay Depo, 35:25-36:7; Hylton Decl. ¶ 3, Ex. C)</p> <p>#8 (Plaintiff told Becerra she drew the drawing.)</p> <p>(B.B. Depo Vol. 1, 20:20-25; Hylton Decl. ¶ 2, Ex. A)</p> <p>#9 (Plaintiff alleges Becerra told Plaintiff that the drawing was inappropriate.)</p> <p>(B.B. Depo Vol. 1, 33:24 – 34:4; Hylton Decl. ¶ 2, Ex. A)</p> <p>#10 (Plaintiff claims Becerra told Plaintiff she was not allowed to draw anymore.)</p> <p>(Deposition of Plaintiff B.B. Vol. 2, taken November 6, 2023 (“B.B. Depo Vol. 2”) 51:11-13; Hylton Decl. ¶ 3, Ex. B)</p> <p>#11 (Plaintiff further alleges Becerra told Plaintiff to apologize to M.C.)</p> <p>(B.B. Depo Vol. 1, 22:4-7; Hylton Decl. ¶ 2, Ex. A)</p>	<p>counselor sent it over.</p> <p>(“Becerra Depo” at pg. 12: 21-25.)</p> <p>Undisputed.</p> <p>(Objection. Hearsay.)</p> <p>Disputed. Clay told Becerra the drawing came from Plaintiff.</p> <p>(“Becerra Depo” at pg.16: 8-25.)</p> <p>(Objection. Hearsay.)</p> <p>Undisputed.</p> <p>Disputed. Becerra told Plaintiff the drawing was “inappropriate” and “racist.”</p> <p>(“B.B. Depo” Vol. 1, at pg 33:16-20)</p> <p>Undisputed.</p> <p>Undisputed.</p> <p>Disputed. B.B. spoke to M.C.</p>
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1	#12 (Plaintiff claims she apologized to M.C., saying “I’m sorry for the drawing” and nothing else.)	after the initial apology, when they got back to the classroom after recess and, again, apologized.
2		
3	(B.B. Depo Vol. 1, 22:19-23; Hylton Decl. ¶ 2, Ex. A)	(B.B. Depo. Vol. 1, pg. 34:10-12).
4		
5	#13 (In all his conversations with Clay, Becerra referred to the drawing as from an innocent child.)	Undisputed.
6		
7	(Clay Depo 41:17-42:5; Hylton Decl. ¶ 4, Ex. C)	
8		
9	#14 (Plaintiff alleges she was told by Ms. Vera and Ms. Mesa that she had to sit out from recess for two weeks.)	Undisputed.
10		
11	(B.B. Depo Vol. 2, 61:4-6; Hylton Decl. ¶ 3, Ex. B)	
12	#15 (Plaintiff claims neither Vera nor Mesa told Plaintiff why she had to sit out from recess.)	Undisputed.
13		
14	(B.B. Depo Vol. 2, 56:17-24; 57:17-23; Hylton Decl. ¶ 3, Ex. B)	
15	#16 (Neither Vera nor Mesa said anything to Plaintiff about the drawing.)	Undisputed.
16		
17	(B.B. Depo Vol. 2 55:14-17; 57:8-10; Hylton Decl. ¶ 3, Ex. B)	
18	#17 (Plaintiff alleges Vera and Mesa said nothing else to Plaintiff about sitting out from recess.)	Undisputed.
19		
20	B.B. Depo Vol. 2 61:15-17; Hylton Decl. ¶ 3, Ex. B	
21		
22	#18 (Becerra did not tell Plaintiff she had to sit out from recess.)	Undisputed.
23		
24	(B.B. Depo Vol. 2 63:13-15; Hylton Decl. ¶ 3, Ex. B)	
25	#19 (There was no email documentation of this interaction with Plaintiff and Becerra.)	Undisputed.
26		
27	(Deposition of Jesus Becerra, taken October 11, 2023 (“Becerra Depo”), 66:19-22; Hylton Decl. ¶	
28		

1	6, Ex. E)	
2	#20 (Plaintiff's missing recess for two weeks was not documented in her discipline file.)	Undisputed.
3	(Hylton Decl. ¶ 8, Ex. G (CUSD 000275-000276))	(Objection. Hearsay and Lack of Foundation.)
4	#21 (Plaintiff continued to draw at school after Mr. Becerra talked to her.)	Disputed. Plaintiff stopped drawing in the presence of others and only drew in secret out of fear of punishment.
5	(B.B. Depo Vol. 2, 55:1-3; Hylton Decl. ¶ 3, Ex. B)	(B.B. Depo Vol. 1, 32:3-9; Hylton Decl. ¶ 3, Ex. B)
6		
7		
8		
9		
10	#22 (At no time when Plaintiff was at school was Becerra mean to her.)	Disputed. Becerra made B.B. feel ashamed and embarrassed for her drawing. Becerra also called B.B. a "liar" when B.B. wrote him a letter asking him to be kinder in the response of Boyle going through the appeals process.
11	(B.B. Depo Vol. 2, 51:2-5; Hylton Decl. ¶ 3, Ex. B)	(B.B. Depo Vol. 2, pg. 79:10-19).
12		
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18	#23 (Plaintiff does not really ever think about the drawing incident.)	Disputed. B.B. began and continued therapy to help with the aftermath of the drawing incident.
19	(B.B. Depo Vol. 2 64:12-18; 64:25 – 65:2; Hylton Decl. ¶ 3, Ex. B)	(B.B.'s Response to Victa's Interrogatories No. 6).
20		
21		
22		
23	#24 (Plaintiff never filed a Tort Claim prior to filing her Complaint.)	Disputed. Chelsea Boyle, Plaintiff's mother and guardian ad litem, filed a tort claim on Plaintiff's behalf and was going through the internal complaint process with CUSD, telling them she
24	(Plaintiff's Response to District's Request for Admissions No. 16; Hylton Decl. ¶ 9, Ex. H)	
25		
26		
27		

1		was seeking counsel, giving notice to the Defendants of the claims herein.
2		
3		
4		("Defendants' Motion for Summary Judgment" at pg. 10)
5		
6	#25 (On August 23, 2022, Ms. Victa was asked to come outside by Mr. Becerra to help with a student who would not go back to class.)	Undisputed.
7		
8	(Deposition of Cleo Victa taken on October 11, 2023 ("Victa Depo") 18:11-20; Hylton Decl. ¶ 7, Ex. F.)	
9		
10	#26 (Victa was a counselor at Viejo Elementary during this school year.)	Undisputed.
11		
12	(Victa Depo 13:18-20; Hylton Decl. ¶ 7, Ex. F)	
13	#27 (Ms. Victa was concerned that Plaintiff's brother would leave campus.)	Disputed. Defendants' supporting evidence merely shows that Victa was "a little" concerned but that Becerra was <i>not</i> concerned about safety issues regarding the students at this time.
14		
15	(Victa Depo 26:9-11; Hylton Decl. ¶ 7, Ex. F)	
16		
17		
18		("Victa Depo" at pg. 26:9-11; pg. 24:21-23; pg. 25:2)
19		
20	#28 (Ms. Victa was concerned for Plaintiff and her brother's safety because they were not in class.)	Disputed. Defendants' supporting evidence does not distinguish which class Plaintiff or her brother were to be in, if any class at all, instead of recess, for example.
21		
22	Victa Depo 34:8-14; Hylton Decl. ¶ 7, Ex. F	
23		
24		
25		("Victa Depo" at pg. 18:21-23)
26		
27	#29 (Ms. Victa was making sure that Plaintiff was safe.)	Disputed.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	<p>(Victa Depo 32:24-33:1; Hylton Decl. ¶ 7, Ex. F)</p> <p>#30 (Ms. Victa only asked Plaintiff “Can you go get your brother? I need to talk to him” prior to Plaintiff going into the bathroom.)</p> <p>(B.B. Depo Vol. 2, 72:17-25; Hylton Decl. ¶ 3, Ex. B)</p> <p>#31 (During this interaction, Ms. Victa was being nice to Plaintiff.)</p> <p>(B.B. Depo Vol. 2, 74:10-13; Hylton Decl. ¶ 3, Ex. B)</p> <p>#32 (Ms. Victa never spoke with Plaintiff about the drawing.)</p> <p>(B.B. Depo Vol. 2, 67:25-68:2; Hylton Decl. ¶ 3, Ex. B)</p> <p>#33 (Becerra was far away from Plaintiff.)</p> <p>(B.B. Depo Vol. 2, 75:17-19; Hylton Decl. ¶ 3, Ex. B)</p> <p>#34 (During this interaction, Mr. Becerra was not moving, he was talking on his walkie talkie.)</p> <p>(B.B. Depo Vol. 2, 75:5-6; 11-16; Hylton Decl. ¶ 3, Ex. B)</p> <p>#35 (After Becerra talked to Plaintiff about the drawing, he never talked to her about the drawing again.)</p> <p>(Decl. ¶ 3, Ex. B)</p>	<p>(B.B.’s Response to Interrogatories propounded by Cleo Victa No. 18)</p> <p>Undisputed.</p> <p>Disputed. Victa was aggressively following B.B., even to the door of the girls’ restroom.</p> <p>(B.B.’s Response to Interrogatories propounded by Cleo Victa No. 18)</p> <p>Undisputed.</p> <p>Disputed. Becerra was close to Plaintiff.</p> <p>(Plaintiff’s Exhibit A; Video footage)</p> <p>Undisputed.</p> <p>Disputed to the extent that Becerra made B.B. feel ashamed and embarrassed for her drawing. Becerra also called B.B. a “liar” when B.B. wrote him a letter asking him to be kinder in the response of Boyle going</p>
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through the appeals process.

(Response to Interrogatory
No. 15(3))

Defendants are not separately entitled to partial summary judgment for any of the following causes of action:

1. Plaintiff's First Cause of Action under 42 U.S.C. § 1983 for the Violation of Plaintiff's First Amendment Rights against Becerra is not barred by qualified community as Plaintiff does have evidence to support a constitutional violation.

GENUINE DISPUTES OF MATERIAL FACTS

Defendant's Uncontroverted Facts and Supporting Evidence	Plaintiff's Response and Supporting Evidence
#1 (Plaintiff made a drawing that stated "Black Lives Mater" and "any life".) (Deposition of Plaintiff B.B. Vol. 1, taken October 5, 2023 ("B.B. Depo Vol. 1") at Pg. 13:4-6; Declaration of Courtney L. Hylton ("Hylton Decl.") at ¶ 2, Ex. A)	Undisputed.
#3 (Plaintiff gave the drawing to a classmate, M.C.) (B.B. Depo Vol. 1, 17:15-16; Hylton Decl. ¶ 2, Ex. A)	Undisputed.
#5 (Cathy Clay informed Becerra about the drawing via email.) (Clay Depo 27:17-19; 93:11-14; Hylton Decl. ¶ 4, Ex. C)	Disputed. Becerra did not "see" the e-mail until a counselor sent it over. ("Becerra Depo" at pg. 12: 21-25.)
#6 (Clay's email stated, "My husband and I will not tolerate any more messages given to our daughter at school because of her skin color... As	Undisputed.

1	the administrator we trust you know the actions	
2	that need to be taken to address the issue.”)	
3	(Hylton Decl. ¶ 5, Ex. D; Clay Depo, 93:1-14.)	
4	#8 (Plaintiff told Becerra she drew the drawing.)	Undisputed.
5	(B.B. Depo Vol. 1, 20:20-25; Hylton Decl. ¶ 2, Ex.	
6	A)	
7	#9 (Plaintiff alleges Becerra told Plaintiff that the	Disputed. Becerra told
8	drawing was inappropriate.)	Plaintiff the drawing was
9	(B.B. Depo Vol. 1, 33:24 – 34:4; Hylton Decl. ¶ 2,	“inappropriate” and “racist.”
10	Ex. A)	(“B.B. Depo” Vol. 1, at pg
11	#11 (Plaintiff further alleges Becerra told Plaintiff	33:16-20)
12	to apologize to M.C.)	Undisputed.
13	(B.B. Depo Vol. 1, 22:4-7; Hylton Decl. ¶ 2, Ex. A)	
14	#18 (Becerra did not tell Plaintiff she had to sit out	Undisputed.
15	from recess.)	
16	(B.B. Depo Vol. 2 63:13-15; Hylton Decl. ¶ 3, Ex.	
17	B)	
18	#22 (At no time when Plaintiff was at school was	Disputed. Becerra made B.B.
19	Becerra mean to her.)	feel ashamed and
20	(B.B. Depo Vol. 2, 51:2-5; Hylton Decl. ¶ 3, Ex. B)	embarrassed for her drawing.
21		Becerra also called B.B. a
22		“liar” when B.B. wrote him a
23		letter asking him to be kinder
24		in the response of Boyle
25		going through the appeals
26		process.
27		(B.B.’s Response to Becerra’s
28		Interrogatories No. 15(3))

2. Plaintiff’s Fifth Cause of Action under 42 U.S.C. § 1983 for Retaliatory Harassment against Becerra is not barred by qualified immunity as Plaintiff

has supporting evidence of a constitutional violation.

GENUINE DISPUTES OF MATERIAL FACTS

Defendant's Uncontroverted Facts and Supporting Evidence	Plaintiff's Response and Supporting Evidence
#11 (Plaintiff further alleges Becerra told Plaintiff to apologize to M.C.) (B.B. Depo Vol. 1, 22:4-7; Hylton Decl. ¶ 2, Ex. A)	Undisputed.
#15 (Plaintiff claims neither Vera nor Mesa told Plaintiff why she had to sit out from recess.) (B.B. Depo Vol. 2, 56:17-24; 57:17-23; Hylton Decl. ¶ 3, Ex. B)	Undisputed.
#16 (Neither Vera nor Mesa said anything to Plaintiff about the drawing.) (B.B. Depo Vol. 2 55:14-17; 57:8-10; Hylton Decl. ¶ 3, Ex. B)	Undisputed.
#18 (Becerra did not tell Plaintiff she had to sit out from recess.) (B.B. Depo Vol. 2 63:13-15; Hylton Decl. ¶ 3, Ex. B)	Undisputed.
#20 (Plaintiff's missing recess for two weeks was not documented in her discipline file.) (Hylton Decl. ¶ 8, Ex. G (CUSD 000275-000276))	Undisputed.
#21 (Plaintiff continued to draw at school after Mr. Becerra talked to her.) (B.B. Depo Vol. 2, 55:1-3; Hylton Decl. ¶ 3, Ex. B)	Undisputed.
#25 (On August 23, 2022, Ms. Victa was asked to come outside by Mr. Becerra to help with a student	Undisputed.

1	who would not go back to class.)	
2	(Deposition of Cleo Victa taken on October 11,	
3	2023 (“Victa Depo”) 18:11-20; Hylton Decl. ¶ 7,	
4	Ex. F.)	
5	#26 (Victa was a counselor at Viejo Elementary	Undisputed.
6	during this school year.)	
7	(Victa Depo 13:18-20; Hylton Decl. ¶ 7, Ex. F)	
8	#27 (Ms. Victa was concerned that Plaintiff’s	Disputed. Defendants’
9	brother would leave campus.)	supporting evidence merely
10	(Victa Depo 26:9-11; Hylton Decl. ¶ 7, Ex. F)	shows that Victa was “a
11		little” concerned but that
12		Becerra was <i>not</i> concerned
13		about safety issues regarding
14		the students at this time.
15	#28 (Ms. Victa was concerned for Plaintiff and her	Disputed. Defendants’
16	brother’s safety because they were not in class.)	supporting evidence does not
17	Victa Depo 34:8-14; Hylton Decl. ¶ 7, Ex. F	distinguish which class
18		Plaintiff or her brother were
19		to be in, if any class at all,
20		instead of recess, for
21		example.
22	#29 (Ms. Victa was making sure that Plaintiff was	Disputed.
23	safe.)	
24	(Victa Depo 32:24-33:1; Hylton Decl. ¶ 7, Ex. F)	(B.B.’s Response to
25		Interrogatories propounded
26		by Cleo Victa No. 18)
27	#30 (Ms. Victa only asked Plaintiff “Can you go	Undisputed.
28	get your brother? I need to talk to him” prior to	
	Plaintiff going into the bathroom.)	
	(B.B. Depo Vol. 2, 72:17-25; Hylton Decl. ¶ 3, Ex.	

1	B)	
2	#31 (During this interaction, Ms. Victa was being	Disputed. Victa was
3	nice to Plaintiff.)	aggressively following B.B.,
4	(B.B. Depo Vol. 2, 74:10-13; Hylton Decl. ¶ 3, Ex.	even to the door of the girls'
5	B)	restroom.
6		(B.B.'s Response to
7		Interrogatories propounded
8		by Cleo Victa No. 18)
9	#32 (Ms. Victa never spoke with Plaintiff about the	Undisputed.
10	drawing.)	
11	(B.B. Depo Vol. 2, 67:25-68:2; Hylton Decl. ¶ 3,	
12	Ex. B)	
13	#33 (Becerra was far away from Plaintiff.)	Disputed. Becerra relatively
14	(B.B. Depo Vol. 2, 75:17-19; Hylton Decl. ¶ 3, Ex.	close to the incident with
15	B)	Victa.
16		(Plaintiff's Exhibit A; Video
17		footage)
18	#34 (During this interaction, Mr. Becerra was not	Undisputed.
19	moving, he was talking on his walkie talkie.)	
20	(B.B. Depo Vol. 2, 75:5-6; 11-16; Hylton Decl. ¶ 3,	
21	Ex. B)	
22	#35 (After Becerra talked to Plaintiff about the	Disputed to the extent that
23	drawing, he never talked to her about the drawing	Becerra made B.B. feel
24	again.)	ashamed and embarrassed for
25	(Decl. ¶ 3, Ex. B)	her drawing. Becerra also
26		called B.B. a "liar" when
27		B.B. wrote him a letter asking
28		him to be kinder in the
		response of Boyle going
		through the appeals process.
		(Response to Interrogatory
		No. 15(3))

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3. Plaintiff's Fifth Cause of Action under 42 U.S.C. § 1983 for Retaliatory Harassment against Victa is not barred by qualified immunity as Plaintiff has supporting evidence of a constitutional violation.

GENUINE DISPUTES OF MATERIAL FACTS

Defendant's Uncontroverted Facts and Supporting Evidence	Plaintiff's Response and Supporting Evidence
#25 (On August 23, 2022, Ms. Victa was asked to come outside by Mr. Becerra to help with a student who would not go back to class.) (Deposition of Cleo Victa taken on October 11, 2023 ("Victa Depo") 18:11-20; Hylton Decl. ¶ 7, Ex. F.)	Undisputed.
#26 (Victa was a counselor at Viejo Elementary during this school year.) (Victa Depo 13:18-20; Hylton Decl. ¶ 7, Ex. F)	Undisputed.
#27 (Ms. Victa was concerned that Plaintiff's brother would leave campus.) (Victa Depo 26:9-11; Hylton Decl. ¶ 7, Ex. F)	Disputed. Defendants' supporting evidence merely shows that Victa was "a little" concerned but that Becerra was <i>not</i> concerned about safety issues regarding the students at this time. ("Victa Depo" at pg. 26:9-11; pg. 24:21-23; pg. 25:2)
#28 (Ms. Victa was concerned for Plaintiff and her brother's safety because they were not in class.) Victa Depo 34:8-14; Hylton Decl. ¶ 7, Ex. F	Disputed. Defendants' supporting evidence does not distinguish which class Plaintiff or her brother were to be in, if any class at all, instead of recess, for example.

1		(“Victa Depo” at pg. 34:8-25)
2	#29 (Ms. Victa was making sure that Plaintiff was safe.)	Disputed.
3	(Victa Depo 32:24-33:1; Hylton Decl. ¶ 7, Ex. F)	(B.B.’s Response to Interrogatories propounded by Cleo Victa No. 18)
4		
5	#30 (Ms. Victa only asked Plaintiff “Can you go get your brother? I need to talk to him” prior to Plaintiff going into the bathroom.)	Undisputed.
6		
7	(B.B. Depo Vol. 2, 72:17-25; Hylton Decl. ¶ 3, Ex. B)	
8		
9	#31 (During this interaction, Ms. Victa was being nice to Plaintiff.)	Disputed. Victa was aggressively following B.B., even to the door of the girls’ restroom.
10		
11	(B.B. Depo Vol. 2, 74:10-13; Hylton Decl. ¶ 3, Ex. B)	(B.B.’s Response to Interrogatories propounded by Cleo Victa No. 18)
12		
13		
14		
15	#32 (Ms. Victa never spoke with Plaintiff about the drawing.)	Undisputed.
16		
17	(B.B. Depo Vol. 2, 67:25-68:2; Hylton Decl. ¶ 3, Ex. B)	
18		

4. Becerra is not entitled to qualified immunity as he did violate a clearly established constitutional right.

GENUINE DISPUTES OF MATERIAL FACTS

23	Defendant’s Uncontroverted Facts and Supporting Evidence	Plaintiff’s Response and Supporting Evidence
24		
25	#6 (Clay’s email stated, “My husband and I will not tolerate any more messages given to our daughter at school because of her skin color... As the administrator we trust you know the actions	Undisputed.
26		
27		

1	that need to be taken to address the issue.”)	
2	(Hylton Decl. ¶ 5, Ex. D; Clay Depo, 93:1-14.)	
3	#11 (Plaintiff further alleges Becerra told Plaintiff	Undisputed.
4	to apologize to M.C.)	
5	(B.B. Depo Vol. 1, 22:4-7; Hylton Decl. ¶ 2, Ex. A)	
6	#25 (On August 23, 2022, Ms. Victa was asked to	Undisputed.
7	come outside by Mr. Becerra to help with a student	
8	who would not go back to class.)	
9	(Deposition of Cleo Victa taken on October 11,	
10	2023 (“Victa Depo”) 18:11-20; Hylton Decl. ¶ 7,	
11	Ex. F.)	
12	#26 (Victa was a counselor at Viejo Elementary	Undisputed.
13	during this school year.)	
14	(Victa Depo 13:18-20; Hylton Decl. ¶ 7, Ex. F)	
15	#27 (Ms. Victa was concerned that Plaintiff’s	Disputed. Defendants’
16	brother would leave campus.)	
17	(Victa Depo 26:9-11; Hylton Decl. ¶ 7, Ex. F)	supporting evidence merely
18		shows that Victa was “a
19		little” concerned but that
20		Becerra was <i>not</i> concerned
21		about safety issues regarding
22		the students at this time.
23		(“Victa Depo” at pg. 26:9-11;
24		pg. 24:21-23; pg. 25:2)
25	#28 (Ms. Victa was concerned for Plaintiff and her	Disputed. Defendants’
26	brother’s safety because they were not in class.)	
27	Victa Depo 34:8-14; Hylton Decl. ¶ 7, Ex. F	supporting evidence does not
28		distinguish which class
		Plaintiff or her brother were
		to be in, if any class at all,
		instead of recess, for
		example.
		(“Victa Depo” at pg. 34:8-25)
	#29 (Ms. Victa was making sure that Plaintiff was	Disputed.
	safe.)	

1 2 3 4 5 6	(Victa Depo 32:24-33:1; Hylton Decl. ¶ 7, Ex. F)	(B.B.'s Response to Interrogatories propounded by Cleo Victa No. 18)
7 8 9 10 11 12	#30 (Ms. Victa only asked Plaintiff "Can you go get your brother? I need to talk to him" prior to Plaintiff going into the bathroom.) (B.B. Depo Vol. 2, 72:17-25; Hylton Decl. ¶ 3, Ex. B)	Undisputed.
13 14 15 16 17 18 19	#31 (During this interaction, Ms. Victa was being nice to Plaintiff.) (B.B. Depo Vol. 2, 74:10-13; Hylton Decl. ¶ 3, Ex. B)	Disputed. Victa was aggressively following B.B., even to the door of the girls' restroom. (B.B.'s Response to Interrogatories propounded by Cleo Victa No. 18)
20 21 22 23	#32 (Ms. Victa never spoke with Plaintiff about the drawing.) (B.B. Depo Vol. 2, 67:25-68:2; Hylton Decl. ¶ 3, Ex. B)	Undisputed.
24 25 26 27 28	#33 (Becerra was far away from Plaintiff.) (B.B. Depo Vol. 2, 75:17-19; Hylton Decl. ¶ 3, Ex. B)	Disputed. Becerra relatively close to the incident with Victa. (Plaintiff's Exhibit A; Video footage)
	#34 (During this interaction, Mr. Becerra was not moving, he was talking on his walkie talkie.) (B.B. Depo Vol. 2, 75:5-6; 11-16; Hylton Decl. ¶ 3, Ex. B)	Undisputed.

5. Victa is not entitled to qualified immunity as he did violate a clearly established constitutional right.

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GENUINE DISPUTES OF MATERIAL FACTS

Defendant's Uncontroverted Facts and Supporting Evidence	Plaintiff's Response and Supporting Evidence
#25 (On August 23, 2022, Ms. Victa was asked to come outside by Mr. Becerra to help with a student who would not go back to class.) (Deposition of Cleo Victa taken on October 11, 2023 ("Victa Depo") 18:11-20; Hylton Decl. ¶ 7, Ex. F.)	Undisputed.
#26 (Victa was a counselor at Viejo Elementary during this school year.) (Victa Depo 13:18-20; Hylton Decl. ¶ 7, Ex. F)	Undisputed.
#27 (Ms. Victa was concerned that Plaintiff's brother would leave campus.) (Victa Depo 26:9-11; Hylton Decl. ¶ 7, Ex. F)	Disputed. Defendants' supporting evidence merely shows that Victa was "a little" concerned but that Becerra was <i>not</i> concerned about safety issues regarding the students at this time. ("Victa Depo" at pg. 26:9-11; pg. 24:21-23; pg. 25:2)
#28 (Ms. Victa was concerned for Plaintiff and her brother's safety because they were not in class.) Victa Depo 34:8-14; Hylton Decl. ¶ 7, Ex. F	Disputed. Defendants' supporting evidence does not distinguish which class Plaintiff or her brother were to be in, if any class at all, instead of recess, for example. ("Victa Depo" at pg. 34:8-25)
#29 (Ms. Victa was making sure that Plaintiff was safe.) (Victa Depo 32:24-33:1; Hylton Decl. ¶ 7, Ex. F)	Disputed. (B.B.'s Response to Interrogatories propounded

1		by Cleo Victa No. 18)
2	#30 (Ms. Victa only asked Plaintiff “Can you go	Undisputed.
3	get your brother? I need to talk to him” prior to	
4	Plaintiff going into the bathroom.)	
5	(B.B. Depo Vol. 2, 72:17-25; Hylton Decl. ¶ 3, Ex.	
6	B)	
7	#31 (During this interaction, Ms. Victa was being	Disputed. Victa was
8	nice to Plaintiff.)	aggressively following B.B.,
9	(B.B. Depo Vol. 2, 74:10-13; Hylton Decl. ¶ 3, Ex.	even to the door of the girls’
10	B)	restroom.
11		(B.B.’s Response to
12		Interrogatories propounded
13		by Cleo Victa No. 18)
14	#32 (Ms. Victa never spoke with Plaintiff about the	Undisputed.
15	drawing.)	
16	(B.B. Depo Vol. 2, 67:25-68:2; Hylton Decl. ¶ 3,	
17	Ex. B)	

6. Plaintiff’s Third Cause of Action for “Intentional Infliction of Emotional Distress” and Fourth Cause of Action for “Negligent Hiring, Supervision, and/or Retention” do not fail as a matter of law.

GENUINE DISPUTES OF MATERIAL FACTS

20	Defendant’s Uncontroverted Facts and	Plaintiff’s Response and
21	Supporting Evidence	Supporting Evidence
22	#24 (Plaintiff never filed a Tort Claim prior to	Disputed. Chelsea Boyle,
23	filing her Complaint.)	Plaintiff’s mother and
24	(Plaintiff’s Response to District’s Request for	guardian ad litem, filed a tort
25	Admissions No. 16; Hylton Decl. ¶ 9, Ex. H)	claim and was going through
26		the internal complaint process
27		with CUSD, telling them she
28		was seeking counsel, giving
		notice to the Defendants of

the claims herein.

("Defendants' Motion for Summary Judgment" at pg. 10)

7. Plaintiff's Third Cause of Action for "Intentional Infliction of Emotional Distress" against Becerra does not fail to state a claim as Defendant suggests.

GENUINE DISPUTES OF MATERIAL FACTS

Defendant's Uncontroverted Facts and Supporting Evidence	Plaintiff's Response and Supporting Evidence
#9 (Plaintiff alleges Becerra told Plaintiff that the drawing was inappropriate.) (B.B. Depo Vol. 1, 33:24 – 34:4; Hylton Decl. ¶ 2, Ex. A)	Disputed. Becerra told Plaintiff the drawing was "inappropriate" <i>and</i> "racist." ("B.B. Depo" Vol. 1, at pg 33:16-20)
#11 (Plaintiff further alleges Becerra told Plaintiff to apologize to M.C.) (B.B. Depo Vol. 1, 22:4-7; Hylton Decl. ¶ 2, Ex. A)	Undisputed.
#18 (Becerra did not tell Plaintiff she had to sit out from recess.) (B.B. Depo Vol. 2 63:13-15; Hylton Decl. ¶ 3, Ex. B)	Undisputed.
#22 (At no time when Plaintiff was at school was Becerra mean to her.) (B.B. Depo Vol. 2, 51:2-5; Hylton Decl. ¶ 3, Ex. B)	Disputed. Becerra made B.B. feel ashamed and embarrassed for her drawing. Becerra also called B.B. a "liar" when B.B. wrote him a letter asking him to be kinder in the response of Boyle going through the appeals process.

1		(B.B.'s Response to Becerra's Interrogatories No. 15(3))
2		
3	#33 (Becerra was far away from Plaintiff.)	Disputed. Becerra relatively close to the incident with Victa.
4	(B.B. Depo Vol. 2, 75:17-19; Hylton Decl. ¶ 3, Ex. B)	(Plaintiff's Exhibit A; Video footage)
5		
6	#34 (During this interaction, Mr. Becerra was not moving, he was talking on his walkie talkie.)	Undisputed.
7		
8	(B.B. Depo Vol. 2, 75:5-6; 11-16; Hylton Decl. ¶ 3, Ex. B)	
9		

8. Plaintiff's Third Cause of Action for "Intentional Infliction of Emotional Distress" against Victa does not fail to state a claim as Defendant suggests.

GENUINE DISPUTES OF MATERIAL FACTS

Defendant's Uncontroverted Facts and Supporting Evidence	Plaintiff's Response and Supporting Evidence
#25 (On August 23, 2022, Ms. Victa was asked to come outside by Mr. Becerra to help with a student who would not go back to class.) (Deposition of Cleo Victa taken on October 11, 2023 ("Victa Depo") 18:11-20; Hylton Decl. ¶ 7, Ex. F.)	Undisputed.
#26 (Victa was a counselor at Viejo Elementary during this school year.) (Victa Depo 13:18-20; Hylton Decl. ¶ 7, Ex. F)	Undisputed.
#27 (Ms. Victa was concerned that Plaintiff's brother would leave campus.) (Victa Depo 26:9-11; Hylton Decl. ¶ 7, Ex. F)	Disputed. Defendants' supporting evidence merely shows that Victa was "a little" concerned but that Becerra was <i>not</i> concerned about safety issues regarding

1		the students at this time.
2		
3		("Victa Depo" at pg. 26:9-11; pg. 24:21-23; pg. 25:2)
4	#28 (Ms. Victa was concerned for Plaintiff and her	Disputed. Defendants'
5	brother's safety because they were not in class.)	supporting evidence does not
6	Victa Depo 34:8-14; Hylton Decl. ¶ 7, Ex. F	distinguish which class
7		Plaintiff or her brother were
8		to be in, if any class at all,
9		instead of recess, for
10		example.
11	#29 (Ms. Victa was making sure that Plaintiff was	("Victa Depo" at pg. 34:8-25)
12	safe.)	Disputed.
13	(Victa Depo 32:24-33:1; Hylton Decl. ¶ 7, Ex. F)	(B.B.'s Response to
14		Interrogatories propounded
15		by Cleo Victa No. 18)
16	#30 (Ms. Victa only asked Plaintiff "Can you go	Undisputed.
17	get your brother? I need to talk to him" prior to	
18	Plaintiff going into the bathroom.)	
19	(B.B. Depo Vol. 2, 72:17-25; Hylton Decl. ¶ 3, Ex.	
20	B)	
21	#31 (During this interaction, Ms. Victa was being	Disputed. Victa was
22	nice to Plaintiff.)	aggressively following B.B.,
23	(B.B. Depo Vol. 2, 74:10-13; Hylton Decl. ¶ 3, Ex.	even to the door of the girls'
24	B)	restroom.
25		(B.B.'s Response to
26		Interrogatories propounded
27		by Cleo Victa No. 18)
28	#32 (Ms. Victa never spoke with Plaintiff about the	Undisputed.
	drawing.)	
	(B.B. Depo Vol. 2, 67:25-68:2; Hylton Decl. ¶ 3,	
	Ex. B)	

9. Plaintiff's Fourth Cause of Action for "Negligent Hiring, Supervision and/or Retention" against Capistrano Unified School District does not fail to state a claim as Defendant suggests. Capistrano Unified School District did in fact breach its duty to Plaintiff in Negligent Supervision and/or Retention of Becerra and Victa.

GENUINE DISPUTES OF MATERIAL FACTS

#9 (Plaintiff alleges Becerra told Plaintiff that the drawing was inappropriate.) (B.B. Depo Vol. 1, 33:24 – 34:4; Hylton Decl. ¶ 2, Ex. A)	Disputed. Becerra told Plaintiff the drawing was "inappropriate" <i>and</i> "racist." ("B.B. Depo" Vol. 1, at pg 33:16-20)
#11 (Plaintiff further alleges Becerra told Plaintiff to apologize to M.C.) (B.B. Depo Vol. 1, 22:4-7; Hylton Decl. ¶ 2, Ex. A)	Undisputed.
#25 (On August 23, 2022, Ms. Victa was asked to come outside by Mr. Becerra to help with a student who would not go back to class.) (Deposition of Cleo Victa taken on October 11, 2023 ("Victa Depo") 18:11-20; Hylton Decl. ¶ 7, Ex. F.)	Undisputed.
#26 (Victa was a counselor at Viejo Elementary during this school year.) (Victa Depo 13:18-20; Hylton Decl. ¶ 7, Ex. F)	Undisputed.
#27 (Ms. Victa was concerned that Plaintiff's brother would leave campus.) (Victa Depo 26:9-11; Hylton Decl. ¶ 7, Ex. F)	Disputed. Defendants' supporting evidence merely shows that Victa was "a little" concerned but that Becerra was <i>not</i> concerned about safety issues regarding the students at this time.

1		(“Victa Depo” at pg. 26:9-11; pg. 24:21-23; pg. 25:2)
2		
3	#28 (Ms. Victa was concerned for Plaintiff and her brother’s safety because they were not in class.)	Disputed. Defendants’ supporting evidence does not distinguish which class Plaintiff or her brother were to be in, if any class at all, instead of recess, for example.
4		
5	Victa Depo 34:8-14; Hylton Decl. ¶ 7, Ex. F	
6		(“Victa Depo” at pg. 34:8-25)
7		
8		
9	#29 (Ms. Victa was making sure that Plaintiff was safe.)	Disputed.
10		(B.B.’s Response to Interrogatories propounded by Cleo Victa No. 18)
11	(Victa Depo 32:24-33:1; Hylton Decl. ¶ 7, Ex. F)	
12	#30 (Ms. Victa only asked Plaintiff “Can you go get your brother? I need to talk to him” prior to Plaintiff going into the bathroom.)	Undisputed.
13		
14	(B.B. Depo Vol. 2, 72:17-25; Hylton Decl. ¶ 3, Ex. B)	
15		
16	#31 (During this interaction, Ms. Victa was being nice to Plaintiff.)	Disputed. Victa was aggressively following B.B., even to the door of the girls’ restroom.
17		
18	(B.B. Depo Vol. 2, 74:10-13; Hylton Decl. ¶ 3, Ex. B)	(B.B.’s Response to Interrogatories propounded by Cleo Victa No. 18)
19		
20		
21	#32 (Ms. Victa never spoke with Plaintiff about the drawing.)	Undisputed.
22		
23	(B.B. Depo Vol. 2, 67:25-68:2; Hylton Decl. ¶ 3, Ex. B)	
24		
25	#33 (Becerra was far away from Plaintiff.)	Disputed. Becerra relatively close to the incident with Victa.
26		
27	(B.B. Depo Vol. 2, 75:17-19; Hylton Decl. ¶ 3, Ex. B)	(Plaintiff’s Exhibit A; Video
28		

1		footage)
2	#34 (During this interaction, Mr. Becerra was not	Undisputed.
3	moving, he was talking on his walkie talkie.)	
4	(B.B. Depo Vol. 2, 75:5-6; 11-16; Hylton Decl. ¶ 3,	
5	Ex. B)	

6
7 DATED: January 22, 2024

HEATH LAW, PLLC

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10 By: /s/ Amber R. Terry
11 **AMBER R. TERRY**
12 *Attorney for Plaintiff*
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